

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
LAREDO DIVISION

ZAIRA CORONELE,

Plaintiff,

v.

JOHN W. KIRK, JR.; NATIONAL
DISTRIBUTORS LEASING, INC.;
and EVILSIZOR TRANSPORTATION
SERVICES, L.L.C.,

Defendants.

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CIVIL CASE NO. 5:14-cv-1

NOTICE OF REMOVAL

PLEASE TAKE NOTICE that Defendants, John W. Kirk, Jr. (“Kirk”) and National Distributors Leasing, Inc. (“National”), by and through their counsel of record and pursuant to 28 U.S.C. § 1332(a), respectfully submits this Notice of Removal, removing the above-entitled lawsuit from the 406th District Court, Webb County, Texas, to the United States District Court for the Southern District of Texas, Laredo Division. Removal is proper on the following grounds:

1. On November 14, 2013, Plaintiff, Zaira Coronele (“Plaintiff”), commenced an action against Defendants, Kirk, National, and Evilsizor Transportation Services, L.L.C. (“Evilsizor”), in the 406th District Court, Webb County, Texas. Plaintiff asserts causes of action for negligence, negligent entrustment, and negligence per se. *See Exhibit A.*¹

¹ All exhibits are attached in the accompanying Appendix (ECF No. 1-1).

2. Plaintiff's Original Petition in the state court proceeding was served on National through the Texas Secretary of State on December 4, 2013. *See Exhibit C.* Kirk has not been served with citation.

3. Kirk and National filed their Original Answer in the State Court proceeding on November 19, 2013. *See Exhibit D; Exhibit E.* The answers were file-marked by the Webb County District Clerk on December 20, 2013. *See id.; Exhibit F.*

4. Removal of this action is permitted pursuant to 28 U.S.C. § 1332(a), since there is complete diversity between the parties. Plaintiff is a citizen of the State of Texas, as a resident of Webb County, Texas. *See Exhibit A*, p.1. At the time of filing suit and at the time of removal, Kirk was and is a resident and citizen of the State of Kentucky. At the time of filing suit and at the time of removal, National was and is a corporation with its location of formation in the State of Indiana and principal place of business in the State of Indiana. Upon information and belief, at the time of filing suit and at the time of removal, Evilsizor is a limited liability company with its sole member, Penni Sue Royston, being an individual who was and is a resident and citizen of the State of Colorado. Additionally, the amount in controversy exceeds \$75,000.00, excluding interest and costs, as Plaintiff contends her damages exceed \$200,000.00, as stated in Plaintiff's Original Petition. *See Exhibit A*, p.6.

5. This Notice of Removal is filed timely under 28 U.S.C. § 1446(b), as it is filed within 30 days of receipt, through service or otherwise, of the initial

pleadings setting forth Plaintiff's claims for relief upon which this action is based. *See Exhibit C.*

6. Venue in this Division is proper under 28 U.S.C. § 1446(a) as the 406th District Court, Webb County, Texas is located within the United States District Court for Southern District of Texas, Laredo Division.

7. There is no indication that Evilsizor has been served with citation in this case, as the Court's docket does not indicate any return of service or answer has been filed. *See Exhibit F.* Therefore, consent to the removal of this case by Evilsizor is not necessary at this time. *See* 28 U.S.C. § 1446 (b)(2)(A) (requiring "all defendant who have been properly joined and served" to consent to the removal).

8. Both Plaintiff and Defendants Kirk and National demanded a jury trial in the state court suit. *See Exhibit A*, p.6; *Exhibit D*, p.2; *Exhibit E*, p.2.

9. Pursuant to 28 U.S.C. § 1446(a) and LR 81, Defendants have attached in an appendix all the state court process, pleadings, and orders served upon it, along with an index, as follows:

Exhibit A: Plaintiff's Original Petition, filed October 25, 2013.

Exhibit B: Notice of Calendar Call, dated November 19, 2013

Exhibit C: Citation to National, served December 4, 2013.

Exhibit D: National's Original Answer, filed December 19, 2013.

Exhibit E: Kirk's Original Answer, filed December 19, 2013.

Exhibit F: Docket Sheet from the Webb County District Clerk.

Exhibit G: A list of all counsel of record, including addresses, telephone numbers and parties represented.

10. A copy of this Notice of Removal is attached to the Notice of Filing of Notice of Removal filed with the 406th District Court, Webb County, Texas, as required by 28 U.S.C. § 1446(d). Defendant will serve and certify service of copies of this Notice of Removal to Plaintiff as required by 28 U.S.C. § 1446(d).

WHEREFORE, Defendants Kirk and National respectfully requests the above-entitled action now pending in the 406th District Court, Webb County, Texas, be removed to the United States District Court for the Southern District of Texas, Laredo Division, and that said Court assume full jurisdiction over the cause herein as provided by law.

Respectfully submitted,

By: s/ Emily A. Quillen
John W. Greene
Texas Bar No. 08391520
Emily A. Quillen
Texas Bar No. 24045624

SCOPELITIS, GARVIN, LIGHT,
HANSON & FEARY, P.C.

801 Cherry Street, Suite 1075
Fort Worth, Texas 76102
Tel: (817) 869-1700
Fax: (817) 878-9472
Email: jgreene@scopelitis.com
Email: equillen@scopelitis.com

ATTORNEYS FOR DEFENDANTS
JOHN W. KIRK, JR. AND NATIONAL
DISTRIBUTORS LEASING, INC.

CERTIFICATE OF SERVICE

On January 2, 2014, I electronically submitted the foregoing document with the clerk of the court for the U.S. District Court, Southern District of Texas, using the electronic case filing system of the court. I hereby certify that I have served all counsel of record listed below electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

Gene S. Hagood
The Law Offices of Gene S. Hagood
1520 E. Highway 6
Alvin, TX 77511
Facsimile: (281) 331-1105

s/ Emily A. Quillen
Emily A. Quillen

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